



## **ORDINANCE 573**

**An ordinance amending Chapter 204 (Taxation) of the  
Code of the Town of Elsmere.**

**Sponsored by: Charles McKewen, 4th District Councilman**

**First and Second Reading:** November 14, 2013 Council Meeting

**Results:        Passed        7 In Favor, 0 Opposed**

**Third and Final Reading:** December 12, 2013 Council Meeting

**Results:        Passed        7 In Favor, 0 Opposed**

# ORDINANCE 573

## An ordinance amending Chapter 204 (Taxation) of the Code of the Town of Elsmere.

**WHEREAS**, the Mayor and Council have determined that it is necessary to amend the Elsmere Realty Transfer Tax to conform to the exemptions provided by 30 *Del. C.* § 5401.

### **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF ELSMERE, THE FOLLOWING:**

1. That Section 204-4 definition of “Document” of Chapter 204 of the Code of the Town of Elsmere is hereby deleted in its entirety and a new Section 204-4 definition of “Document” be established to read as follows.

(1) “Document” means any deed, instrument or writing whereby any real estate within this State, or any interest therein, shall be quitclaimed, granted, bargained, sold or otherwise conveyed to the grantee.

A. “Document” shall not include the following:

- a. Any will;
- b. Any lease other than those described or defined in paragraph (4) of this section below;
- c. Any mortgage;
- d. Any conveyance between corporations operating housing projects pursuant to Chapter 45 of Title 31 and the shareholders thereof;
- e. Any conveyance between nonprofit industrial development agencies and industrial corporations purchasing from them;
- f. Any conveyance to nonprofit industrial development agencies;
- g. Any conveyance between husband and wife;
- h. Any conveyance between persons who were previously husband and wife, but who have since been divorced; provided such conveyance is made after the granting of the final decree in divorce and the real estate or interest therein subject to such conveyance was acquired by the husband and wife, or husband or wife, prior to the granting of the final decree in divorce;

- i. Any conveyance between parent and child or the spouse of such a child;
- j. Any conveyance:
  - 1. To a trustee, nominee or straw party for the grantor as beneficial owner,
  - 2. For the beneficial ownership of a person other than the grantor where, if such person were the grantee, no tax would be imposed upon the conveyance pursuant to this chapter, or
  - 3. From a trustee, nominee or straw party to the beneficial owner;
- k. Any conveyance between a parent corporation and a wholly-owned subsidiary corporation; provided such conveyance is without actual consideration;
- l. Correctional deeds without actual consideration;
- m. Any conveyance to or from the United States or this State, or to or from any of their instrumentalities, agencies or political subdivisions and the University of Delaware;
- n. Any conveyance to or from a corporation, or a partnership, where the grantor or grantee owns stock of the corporation or an interest in the partnership in the same proportion as the grantor's or grantee's interest in, or ownership of, the real estate being conveyed; provided, however, that this paragraph shall not apply to any distribution in liquidation or other conveyance resulting from the partial or complete liquidation of a corporation, unless the stock of the corporation being liquidated has been held by the grantor or grantee for more than 3 years; provided, further, this paragraph shall not apply to any conveyance from a partnership to its partners unless the partners' interest in the partnership has been held for more than 3 years;
- o. Any conveyance by the owner of previously occupied residential premises to a builder of new residential premises when such previously occupied residential premises are taken in trade by such builder as a part of the consideration from the purchaser of new, previously unoccupied premises;
- p. Any conveyance to the lender holding a bona fide mortgage, which is genuinely in default, either by a sheriff conducting a foreclosure sale or by the mortgagor in lieu of foreclosure;

- q. Any conveyance to a religious organization or other body or person holding title to real estate for a religious organization, if such real estate will not be used following such transfer by the grantee, or by any privy of the grantee, for any commercial purpose; provided, however, that only that portion of the tax which is attributable to and payable by the religious organization or other body or person holding title to real estate for a religious organization under 30 *Del. C.* § 5402 shall be exempt;
- r. Any conveyance to or from a volunteer fire company, organized under the laws of this State; provided, however, that only that portion of the tax which is attributable to and payable by the volunteer fire company under 30 *Del. C.* § 5402 shall be exempt;
- s. Any conveyance of a “manufactured home” as defined in § 7003 of Title 25, provided tax on said conveyance has been paid under 30 *Del. C.* § 3002;
- t. Any conveyance without consideration to an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. § 501(c)(3)];
- u. Any conveyance to a nonprofit conservation organization when the property is purchased for open space preservation purposes;
- v. Any conveyance to or from an organization exempt from tax under § 501(c)(3) of the federal Internal Revenue Code when the purpose of said conveyance is to provide owner-occupied housing to low and moderate income households by rehabilitating residential properties and reselling said properties without profit;
- w. Any conveyance between siblings, half siblings or step siblings.

B. The term “Document” defined in Subsection A of this section shall include the following:

- (1) Any writing purporting to transfer a title interest or possessory interest for a term of more than five years in a condominium unit or any unit properties subject to the Unit Property Act;
- (2) Any writing purporting to transfer a title interest or possessory interest of any lessee or other person in possession of real estate owned by the state or other political subdivision thereof;

- (3) Any writing purporting to assign or transfer a leasehold interest or possessory interest in residential property under a lease for a term of more than five years. For this purpose, the term “residential property” means any structure or part of structure which is intended for residential use, and excluding any commercial unit subject to tax under Paragraph (6) of Subsection (a) of § 2301 of Title 30 of the Delaware Code, relating to commercial lessors.
- C. In determining the term of a lease under Subsection B above, it shall be presumed for the purpose of computing the lease term that any rights or options to renew or extend will be exercised.
- D. For purposes of the definition of “value” in the case of a document described in Subsection B under which the consideration is based in whole or in part on a percentage of the income or receipts to be received in the future, actual consideration shall include the amounts actually received under such percentage of income or receipts provision; provided, however, and notwithstanding any other provisions of this article, that the tax imposed by this article shall be due and payable within 30 days after the date such amounts become due and payable under the agreement.
- E. Where there is a transfer of a residential property by a licensed real estate broker, which property was transferred to the broker within the preceding year as part of the consideration for the purchase of other residential property, a credit for the amount of the tax paid at the time of the transfer to the broker shall be given to the broker toward the amount of the tax due upon the transfer. If the tax due upon the transfer from the licensed real estate broker is greater than the credit given for the prior transfer, the difference shall be paid and if the credit allowed is greater than the amount of the tax due, no refund shall be allowed.

November 14, 2013  
First and Second Reading

December 12, 2013  
Third and Final Reading

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Steven E. Burg, Mayor

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Joann I. Personti, Secretary

Approved as to form:

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Town Solicitor

## SYNOPSIS ORDINANCE 573

This Ordinance brings those portions of Chapter 204 of Code of the Town of Elsmere which specifically address the State Reality Transfer Tax into compliance with the amendments to the State law.

Fiscal Impact:           None